IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8236 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GODHAVARIBEN KURJIBHAI MORADIYA

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for Petitioner

NOTICE SERVED BY DS for Respondent No. 1, 5, 6

MR KV SHELAT for Respondent No. 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 29/08/2000

ORAL JUDGEMENT

#. Heard Mr.Nirzar Desai, learned advocate for Mr.Y.N.Oza, learned Senior Advocate appearing on behalf of the petitioner and Mr.K. V. Shelat, learned advocate appearing on behalf of the respondents.

#. The brief facts of the present petition are as under.

The petitioner owned land bearing Survey No. 103 of village Pratapgadh, Taluka Palitana. The said land came to be sold to respondent No. 3 namely, Babulal Alias Revashanker Jivaram Kachchi. On 17-12-1980 entry No.468 came to be mutated in the revenue record in the name of Revashanker Jivaram Kachchi. The respondent No. 3 made application to the Assistant Collector, Taluka Palitana for granting permission for non agricultural use of the said land in the year 1984. After making inquiry, the Assistant Collector found that the respondent No. 3 was not an agriculturist when the land in question was purchased by him and, therefore, suo motu proceedings were initiated by the Assistant Collector and by order dated November 17, 1986 and entry No. 468 dated 17th December, 1980 came to be cancelled by the Assistant Collector. Being aggrieved by the aforesaid order, the respondent No.4 filed appeal being Appeal No. 37/86 before the Collector, Bhavnagar challenging the order of the Assistant Collector and the said appeal was also dismissed on 6th Marcy, 1988. Against that, revision application was filed before the Additional Chief Secretary (Appeals) by the respondent No.4 but the said application was also rejected by order dated 12th September, 1988. Thereafter, the respondent No.4 approached this Court by way of Special Civil Application No. 3220 of 1989. This Court by order dated 7th July, 1997 quashed and set aside the order passed by the respondent No.1 and remanded by the matter back for fresh consideration. The petitioner made application to the Collector on November 11, 1997 pertaining to the land bearing Survey No. 103 of village Pratapgadh for reverting the land to the petitioner as the purchaser was not agriculturist. In the said application, the Mamlatdar has given his reply stating that no action can be taken as the papers are not available with the office and the papers were sent to the office of the respondent No. 1. An application came to be filed before the Additional Secretary (Appeals) by two persons , namely, Jagarana Mukhabhai Laxmanbhai and Jagarana Sartul Kukhabhai, both residents of Sarvodaya Society, Palitana pertaining to Entry No.2172 and Entry No.2173 in respect of the land purchased by the said persons in that case from respondent No.4. In that proceedings, respondent No. 1 passed order dated 28th January, 1998. In the said proceedings, the Additional Chief Secretary held that Entry No. 468 dated 7th December, 1980 is valid and certified accordingly and on that basis , Entry No. 2172

and Entry No. 2173 were also confirmed on the basis of the order passed in Revision Application Nos. 1/88 and 8/1997. That order is under challenge in the present proceedings by the petitioner.

#. The main contention which has been raised by the learned advocate appearing on behalf of the petitioner that in the entire earlier proceedings, the petitioner was not joined as the party and no reasonable opportunity of being heard was given by any of the authority to the petitioner when the land in question was belonged to the petitioner. Mr.Shelat, learned advocate appearing on behalf of the respondent Nos. 5 & 6 supported the decisions of the Additional Chief Secretary (Appeals) of State of Gujarat dated 28th January, 1998. The learned AGP Ms. Punani appearing on behalf of the respondent Nos. 1 to 3 supported the decisions of respondent No.1 dated 28th January, 1998. Shri Shelat, learned advocate for respondent Nos. 5 & 6 has pointed out that after considering the evidence of the revenue record and certificates - Annexure-A & B of Special Civil Application No. 3220 of 1989, this Court had held in favour of the respondent No. 5 and 6 and to that effect, observation has also been made by this Court in para 2 & 3 of the judgment dated 7th July, 1997. Mr.Shelat has also submitted that this Court has considered the revenue record and certificate at Annexure-A & B to show that the respondent No. 4 was an agriculturist holding land in village Bag (Gondaliyali) in Mandvi Taluka of Kutch District, but he has shifted to Pratapgadh village in Palitana Taluka in Bhavnagar District. It is also observed that in Annexure-A the name of the person shown in Rajgor Babu Jevaran (Bag), but the name of the respondent No. 4 is Revashanker Jivram Katchhi. Therefore the name as entered in Annexure-A is not tallying with the name of the respondent No.4. This discrepancy was to be found from the document Kheduth Khatavahi at Annexure-G in respect of land of Survey Nos. 46, 47, 707 and 76 which was also produced by the respondent No. 4 before the authorities, where the name is mentioned as Rajgor Babu (Revashanker) Jeevram. Said document is not disputed by the counsel for the respondents of that petition at that stage, therefore, this Court has considered that very material pieces of evidence and came to the conclusion that the order passed by the revisional authority is required to be quashed and set aside only on the ground that error apparently on the face of the record has been committed by the authorities. This Court was satisfied that there is some substance in the contention of the respondent No. 4 herein to the effect that he has alias name also and ultimately the

said Special Civil Application was allowed and the order passed by the Additional Chief Secretary (Appeals), Revenue Department dated 12th September, 1988 is quashed and set aside and the matter was remanded back to the respondent No. 1 for deciding the same afresh after considering the evidence aforesaid. Thereafter, the respondent No. 1 has decided said revision application and considered the documents which were referred and relied by this Court in Special Civil Application No. 3220 of 1989 . The respondent No.1 has given reasons in para 5 & 6 in support of its conclusion. The respondent No. 1 has considered the decision of this Court dated 7th July, 1997 and also considered the document which were relied by this Court and came to the conclusion that respondent No. 4 was agriculturist on the basis of the documentary evidence and considering the copy of Form No.8-A of Survey No. 46, wherein the name of respondent No. 4 Rajgor Babu Jivram was existing as the account holder and considering this document, Khedutphothi as well as the copy of Form No. 8/A in respect of Survey No. 46, the respondent No. 1 has relied that documents which were relied upon by this Court and came to the conclusion that respondent No. 4 was agriculturist and therefore, order passed in favour of the respondent No. 2 in revision application No. 8/ 87 wherein , entry of sale deed No. 468 which was sanctioned by the authority has been confirmed by the respondent No. 1 and therefore, the respondent No. 1 has confirmed the subsequent entry No. 2172 and 2173. The entry No. 468 and on that basis subsequent entry No. 2172 and 2173 in respect of the other sale deed by the respondent No. 5 & 6 of the present petition have also been confirmed by the respondent No. 1. The respondent No. 1 has also observed in the order that the respondent Nos. 5 & 6 are father and son purchased the land from respondent No. 4 Babulal alias Revashanker Jivram Kachchi and at the time when the sale deed was executed between the parties with the respondent Nos. 5 & 6 and with respondent No.4, at that time, respondent Nos.5 & 6 having their agricultural land bearing S.No. 313 at Paliatana as per the copy produced on record 7 X 12 and 8/A. Therefore, the respondent Nos. 5 & 6 both are agriculturists and on that basis, agricultural land has been purchased by the respondent Nos. 5 & 6 and therefore, the entry No. 2618 which was sanctioned is required to be confirmed and considering this evidence on record,the respondent No. 1 has passed the order setting aside the order passed by the Collector, Bhavnagar dated 17th March, 1994 and revision application was allowed as per the reasons given in para 5 & 6 of the decision of the revision application.

#. I have perused the entire order passed by the revisional authority - the respondent No. 1 and having perused the order passed by this Court on 7th July, 1997. The respondent No. 1 has rightly considered the evidence which were on record. Khedutpothi and copy of the form 8/A of Survey No. 46 in both these documents, names of respondent No. 4 of the present petition is recorded as Rajgor Babu (Reveshanker Jivaram Kachchi). Therefore, the order passed by the Collector, Bhavnagar dated 17th March, 1994 that respondent No. 4 was not an agriculturist is contrary to the record and illegal and therefore, it was rightly set aside by the respondent No.1.

#. In the entire transaction, according to my opinion, the petitioner has no locus standi to challenge any proceedings between respondent No. 4 and respondent Nos. 5 & 6 of the present petition because the petitioner has sold his property to the respondent No. 4 by sale deed dated 12th August, 1980 and necessary entry was made on 7th December, 1980 . Thereafter the petitioner have no locus stani to challenge any subsequent proceedings which were initiated by the respondent authority against the respondent No. 4. This question has been examined by this Court in case of SMT. RATNAPRABHABAI VS. TULSIDAS V. PATEL (1982) 23 (2) GLR, this Court has observed as under:

> It appears that the petitioner having pocketed Rs.1,00,000/- years back in 1962 is trying to catch at a straw and is practically indulging in the policy of dog in the manger by seeing that the hanging sword of the present litigation lingers on so that at some time, respondents nos. 1 and 3 may come round and may give some added financial advantage to the petitioner by way of bargain and if the present proceedings are kept pending, such oblique intention of the petitioner may get fructified. The Court obviously cannot be a party to such a design. When the petitioner is not a legally aggrieved party, it is impossible to give her any relief in the present proceedings under Article 227 of the Constitution ..... "

#. The aforesaid observation of the learned Single Judge [Coram : S. B. Majmudar, J.] has also been considered by the Division Bench of this Court in LPA No. 1625 of 1999 decided in February, 2000. The division bench has considered the reported decision of 1982 (23)

GLR (2) 213 on the basis of the fact that it is not disputed that the petitioner had sold the land before more than a decade. It was for the authority to consider the sale deed was registered. In our view, in these circumstances, the ratio laid down in RATANAPRABHABAI (Supra), rules squarely apply. Similarly, the Division bench of this Court in LPA No. 1153 of 1998 decided on 2nd September, 1999 has also considered similar situation wherein, it is observed that the original transferor has accepted the consideration and must have made the transferees believe that the transaction was in accordance with law. Therefore, the present appellants, who are the legal heirs of the original transferror, cannot be heard to say that thy are entitled to the benefit of such a transaction, which was opposed to law. Considering the aforesaid proposition, Mr.Shelat relied upon two decisions of the Division Bench of this Court and RATNAPRABHABAI (Supra) pointed out that after sale deed executed in favour of the respondent No.4, having received consideration, in that case, the petitioner have no locus standi to challenge or to get any benefit from the respondent No. 4. Therefore, Mr.Shelat submitted that the petitioner was not necessary party in any of the subsequent proceedings between the respondent No. 4 and with the authority and the respondent No. 4 and respondent No. 5 & 6.

#. Considering this submission of Mr.Shelat and relying the decision of the Division Bench of this Court as well as of the learned Single Judge and taking into consideration the order passed by the respondent No.1 as well as the order passed by this Court in Special Civil Application No. 3220 of 1989 dated 7th July, 1997, according to my opinion, the respondent No. 1 has not committed any error of law and fact while passing the order impugned in this petition dated 28th January, 1998. It is also noted that the learned advocate appearing on behalf of the petitioner has not been able to point out any infirmity or any error either in law or facts which can be said to have been committed by the respondent No. 1. Therefore, the order passed by the respondent No.1 dated 28th January, 1998 is legal and valid and in consonance with the order passed by this Court in Special Civil Application No. 3220 of 1989 dated 7th July, 1997, therefore, there is no error apparent on the face of record seems to have been committed by the respondent No. 1 which requires any interference by this Court while exercising powers under Article 226 and 227 of the Constitution. This Court cannot act as an appellate authority and also cannot reappreciate the evidence which was appreciated by the authority as per the judgment of

the Apex Court reported in 1998 (1) GLR 17 and 1998 AIR

Supreme Court Weekly 1840. In the result, the petition is dismissed. Ad interim relief if any, shall stand vacated. Notice discharged with no order as to costs.

Date : 29-8-2000 [H.K.Rathod,J.]

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